

PSYCHOLOGICAL REEVALUATIONS: POLICIES AND GUIDELINES



PREPARED BY

OCCUPATIONAL HEALTH PROGRAMS

**CHIEF EXECUTIVE OFFICE
RISK MANAGEMENT BRANCH**

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PSYCHOLOGICAL REEVALUATIONS: POLICIES AND GUIDELINES

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STATEMENT OF PURPOSE

These guidelines are for use by human resources personnel at the County of Los Angeles (County), and describe the rules and policies that govern employee reevaluation provisions of the County's Civil Service Rules (CSR). The guidelines address the respective roles and procedures of County departments and the Chief Executive Office (CEO) Occupational Health Programs (OHP) in initiating and carrying out employee psychological reevaluations.

The CEO's designee for overseeing the application of CSR 9 concerning medical standards, policies and procedures is the Assistant Chief Executive Officer of the Risk Management Branch. OHP's primary contact for psychological services is the Chief of Psychological Services.

Psychiatric Emergencies

OHP is not an emergency evaluation responder. A department may seek **consultation** to determine an appropriate course of action by calling the OHP Chief of Psychological Services (213 738-4200).

When an employee is in an emotional crisis or poses an immediate safety risk **(that is, threats or actions that pose imminent danger to self or others)**, please do the following:

- Immediately notify on-site security personnel
- Obtain emergency help from local law enforcement by calling 911
- Warn potential victims
- Seek personal safety
- Post event, the victim or supervisor/manager must contact the Office of Security Management (OSM) within 24 hours at:

**Office of Security Management
(213) 974 - 7926**

The County's Department of Mental Health (DMH) operates a Psychiatric Mobile Response Team (PMRT) to make on-site evaluations of individuals when it is not possible or safe to transport the employee for psychiatric care. The DMH ACCESS Center telephone number is:

(800) 854-7771

Peace officers are also authorized to respond to requests for on-site help. They may also make an initial assessment and transport the employee to a facility for further evaluation.

Authority & Civil Service Rules

CSR 9.07 authorizes the CEO to require a medical reevaluation of an employee at the time of promotion, demotion, reassignment, or other change of status involving increased physical, psychological and environmental demands. "Medical" includes "psychological" for purposes of applying the CSR's to cases involving mental or emotional causes.

CSR 9.07(B) provides for a medical or psychological reevaluation to determine fitness for duty when there is a question of a medical condition affecting the employee's ability to perform the duties of the job satisfactorily and without undue harm to self or others. CSR 9.07(B) may be imposed by a department request and consent by the employee, or by a department with concurrence by the CEO designee.

Clarification of the Term "Reevaluation"

The County's Medical Standards for Employment (CSR 9), requires a medical examination of every applicant's health status following a "conditional" job offer. All positions are evaluated by a physician who determines the employee's capacity to withstand the psychological demands regardless of a separate assessment by a psychologist. Since the medical and psychological fitness of an applicant are initially appraised, a fitness examination once employment has begun is technically a "reevaluation." The nature and extent of the psychological examination varies among job classifications. The extent of the examination depends on the physical, psychological, and environmental demands of the duties of the position.

PSYCHOLOGICAL REEVALUATIONS

Circumstances That Warrant a Request for Reevaluation

A department may seek a psychological reevaluation of an employee when objective observations would lead to the conclusion that the employee's actions, verbal or otherwise, are beyond acceptable tolerance such as:

- Verbal or behavioral actions that present an immediate risk to the health and safety of the employee or others; or
- Verbal or behavioral actions that have increased in frequency and present a concern for violence in the workplace; or
- When other measures, such as supervisory counseling or reasonable accommodation measures, have failed to resolve performance and safety concerns of the employee or others.

The following are examples of circumstances that may warrant a department's request for a reevaluation regardless if the employee is on leave or at work:

- The employee has displayed poorly controlled anger and threatening behavior (verbal or nonverbal) towards co-workers or supervisory staff.

- There has been a marked decline in job performance in a formerly fully competent employee. Observations may include irrational outbursts, uncontrollable crying, and inappropriate behavioral responses to the work environment. Examples of observed employee's inappropriate behavior or statements should be provided. No medical documentation was presented by the employee to explain the behavior.

The most important information is the department's description of the employee's inability to satisfactorily and safely perform the duties of the job. If the situation merits immediate action, such as those involving threats of violence in the workplace, a verbal request for an assessment may be approved by OHP.

Requesting a Psychological Reevaluation

Occasionally, the need for a psychological reevaluation as well as a medical reevaluation may not be readily obvious. The departments are encouraged to seek consultation in order to determine the appropriate course of action. Medical and psychological reevaluations may be conducted while the employee is off duty or while on-the-job.

Arranging a Formal Psychological Reevaluation

Before preparing a written request for reevaluation, consult with OHP, Chief of Psychological Services (213-738-4200), in matters about employee conduct, emotional and cognitive functioning, or substance abuse. The department may wish to discuss whether a reevaluation is appropriate and fully justified.

Since OHP is entrusted to perform reevaluations for County departments according to CSR 9.07, making relevant documents available for OHP review is not disclosure of personal or medical information outside the employer entity. OHP will seek authorization from the employee for the release of medical information.

To request a non-urgent psychological reevaluation, the department should take the following steps:

1. Verify there is **no conflicting workers' compensation claim and that the employee is not on Family Medical Leave** (refer to page 10).
2. Prepare a **written request** for reevaluation directed to the Chief of Psychological Services to include:
 - **Employee identification.** Provide the name, Social Security Number, and position.
 - **Justification.** Explain the nature of the job-relevant performance, conduct, and safety issues of concern. Observations may include noteworthy behaviors or statements, and patterns of deficiencies which have not been corrected after the employee has been counseled.

- **Supporting documents.** If previously provided, any medical certifications from treatment or health care provider, performance evaluations, or memos of counseling or discipline.
 - **Department contact.** The name, position, and telephone number of a departmental contact person for purposes of arranging appointments, securing more information, and facilitating communication between OHP and the department.
3. The department should **explain to the employee** the reasons for seeking a reevaluation pointing out job-relevant issues prompting the referral. The consequences of non-cooperation should be clearly stated. Although the letter of request is a confidential document between the department and OHP, it may be used as the framework to disclose to the employee the reason for the request. For concerns about possible volatile or adverse responses by the employee, the department should consult with OHP. If suspected, communication should be arranged under increased security.
4. The department should **seek the employee's signed consent** (refer to Appendix I for sample language) to reevaluation. Attach the employee's consent to the letter of request to OHP. If a lack of accessibility or other circumstances make it impractical, verbal consent will be enough until confirmed in writing at the appointment by OHP. The employee's verbal consent instead of a signed consent must be clearly documented in the letter of request.

Occasionally, before giving written consent, an employee seeks answers to particular questions about the reevaluation process. The department serves as a liaison to OHP and delivers the information to the employee.

If an **employee refuses** to consent to a reevaluation, the department may tell the employee of its intent to obtain an order for reevaluation under the CSR 9.07(B) and proceed to seek formal concurrence from the CEO's designee. When an employee does not cooperate, the individual may forfeit benefits from the "interaction." Employees are accountable for participation and may be subject to discipline by the department.

After consultation, departments should forward the request for reevaluation and, if the employee declines consent, the request for concurrence to order the employee, to:

Chief of Psychological Services
Occupational Health Programs
Chief Executive Office
Risk Management Branch
3333 Wilshire Blvd., Suite 1000
Los Angeles, CA 90010

FAX 213-351-2744

PSYCHOLOGICAL REEVALUATION PROCESS

When the OHP Chief of Psychological Services approves a psychological reevaluation, the reevaluation process is as follows:

- ✓ **Before the Appointment** - As well as conveying an **appointment date and time** to the department's contact person, OHP may provide **special instructions** to be communicated to the employee. Typical instructions are to allow several hours for the psychological testing and interview, to bring reading glasses, if necessary, and to call if clarification is needed.

To safeguard the employee's privacy, the psychologist's contacts with departmental personnel are on a need-to-know basis. The psychologist's primary source of departmental information about the employee is someone on the department's human resource staff assigned to the case. To clarify or help resolve questions raised in the evaluation, the psychologist may seek more information from one or more of the employee's **supervisors, managers, or administrators** who were instrumental in justifying the department's reevaluation request.

- ✓ **At the Appointment** - The employee's informed consent is needed by the psychologist before beginning the reevaluation. The consent form summarizes the CSR for reevaluation, describes measures taken to protect the employee's confidentiality and indicates the nature of the feedback provided to the department and to the employee. **An employee's refusal to sign the consent form is a refusal to continue with the reevaluation. This will be communicated to the department and may lead to disciplinary action by the department.**

- ✓ **Evaluation and Assessment** - The psychologist selects the evaluation procedures based on specific reevaluation requests and any preliminary diagnostic considerations. This decision may also be influenced by observations or findings during the evaluation itself. OHP psychological testing gathers objective information about job-relevant areas of emotional or cognitive functioning. Although most evaluations need only one appointment, evaluation requirements of a particular case may compel additional appointments. To complete the reevaluation, the OHP psychologist will draft a clinical report of findings and conclusions, and present it to the Chief of Psychological Services.

- ✓ **Dissemination of information to the department** is limited to work restrictions. Based on the psychologist's report, the Chief of Psychological Services will send a letter that describes functional capacity ranging from full ability to perform all the duties with no work restrictions or limitations at one extreme, to full incapacity for the foreseeable future at the other extreme. The letter will **NOT** contain recommendations for reasonable accommodations or diagnosis of a medical condition. Effective accommodations are developed in an interactive process by the department as mandated by the American's with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA).

For cases involving discipline or adverse employment decisions, the letter may address the employee's accountability to adhere to standards of performance and conduct.

All psychological information by OHP shall be separate from an employee's department personnel file and should only be accessible to approved staff. The following are exceptions for release of confidential information:

- 1) First aid and safety personnel may be informed, when appropriate, if the employee may need emergency treatment; or
- 2) Government officials investigating compliance with the FEHA and/or ADA will be provided relevant information on request; or
- 3) Under workers' compensation laws, information from the evaluation may be disclosed to evaluate a claim.

✓ **Communication to the Employee** - OHP Psychological Services provides reevaluation results directly to the employee either through a telephone conversation or, when more appropriate, through a follow-up appointment. As well as discussing work restrictions reported to the department, more personalized information, such as referrals for professional consultation to the Employee Assistance Program or external resources, may be suggested. Treatment is not provided to employees by OHP psychologists.

PROVISIONS AND EXCEPTIONS

Contracting With Private Psychologists for Reevaluations

Some departments may have historically used consulting psychologists to perform County psychological reevaluations. The **CEO does not recommend this approach**. If a department has its own contractual arrangement or if circumstances otherwise require a department to obtain services of an independent consulting psychologist to perform a reevaluation, the following provisions apply:

- Statements of Work in the contractual agreements between departments and consulting psychologists pertaining to psychological reevaluation services must be approved by OHP.
- OHP and the Chief of Psychological Services are available to consult with the department and/or its consulting psychologist(s) regarding reevaluation policies or procedures.
- Qualifications of evaluators performing reevaluations under the authority of the CEO and CSR 9.07 must conform to the standards of competence established through California State licensure, as well as any additional standards that may be applicable to specialized evaluation procedures or a specialized class of examinees, such as law enforcement personnel.
- OHP will seek to ensure that reevaluation and reporting procedures are consistent with standards of clinical practice as well as County policies and procedures.

- OHP will also ensure that the department's informational needs under CSR 9.07 and 9.08 pertaining to employee's fitness or incapacity are met, and that the employee's entitlement to privacy and confidentiality is protected within legal boundaries.
- OHP will not participate in administrative Civil Service process should a challenge occur.

Ordered Absence (formerly known as Paid Administrative Leave) Pending Medical Certification or Reevaluation

Granting an employee ordered absence is a departmental option intended to be used only rarely. In typical cases, an employee's behavior or verbal statements on the job are sufficient to raise a concern about potential harm, emotional control and safety, and to warrant the employee's removal from work pending a professional assessment. The department may exercise its option to place the employee off work on **temporary** ordered absence (see Department of Human Resources PPG# 810 – "Ordered Absence from Regular Work Location"). This will provide time to determine if the employee is mentally or emotionally accountable for their behavior.

ZERO TOLERANCE POLICY - The policy of the County of Los Angeles is that it will tolerate no workplace acts of violence or threats in any form.

- Any reported threat will initiate necessary security measures and a departmental investigation. Any violation of this policy must be reported to the Office of Security Management (OSM) at (213) 974-7926 or sent via FAX to (213) 613-0848. OSM shall make timely notification of the incident and circumstances to the CEO.

When approving ordered absence, departments are encouraged to explicitly communicate to the employee the duration, purpose and reason for termination of the leave. Such leave should be granted for 30 days only (extended by signature of Department Head), and for the purpose of obtaining medical certification about the employee's ability to safely return to duty. Any unauthorized failure to appear for the reevaluation appointment or lack of cooperation, including delays, is cause for discontinuing the employee's paid leave status. Once that determination is made, ordered absence should be changed to sick leave or other paid leave depending upon the findings.

Return to Work (RTW) Clearance by Health Care Provider

In most cases, if an employee has been out on medical leave for a psychological condition, certification from the health care provider will suffice as clearance to return the employee to work, unless it involved a safety concern.

Concerns about the adequacy of a mental health care provider's certifications regarding an employee, about whom there is a safety concern, must be discussed with the OHP Chief of Psychological Services.

When an employee provides a series of medical certifications from health care providers that initially cite a specific return-to-work date but then, continually extend the date of return to work, consultation with CEO Return-to-Work Unit (213-738-2116) is in order.

Family Medical Leave (FMLA), California Family Rights Act (CFRA), and Pregnancy Disability Leave (PDL)

FMLA and CFRA require the County to accept an employee's medical certification that they cannot perform the job duties for a certain time period. This applies to employees' documentation for a qualifying event and their return fitness for duty. For information about obtaining clarification of FMLA/CFRA/PDL Certifications, please refer to the County's "Family Leave Policy Guidelines."

If an employee is on a regular or intermittent leave of absence designated as FMLA/CFRA or PDL, the department may not request an OHP medical or psychological reevaluation to verify the health care provider's opinion.

An employee who has returned to work after a certified period of FMLA/CFRA leave may thereafter become subject to CSR 9.07(B) should circumstances such as a safety concern or other circumstances warrant a reevaluation.

Work-Related Injuries or Illnesses and the Reevaluation Process

CSR 9.07(C) states that if the employee's condition is the result of a work-related injury that falls within the jurisdiction of the workers' compensation Appeals Board (WCAB), the determination of the employee's medical capacities shall be based solely upon the medical evidence used by the appeals board in its disposition of the case. **Accordingly, the County may rely on the employee's medical or psychological evidence provided to the WCAB.**

The WCAB has no jurisdiction once a claim is denied and there is no litigation by either the claimant or the County. The WCAB also loses jurisdiction after an accepted claim has been adjudicated and/or resolved and five years have passed since the date of injury. If either of these situations exists, OHP may proceed with an independent medical or psychological reevaluation.

OHP may conduct a reevaluation even if the employee has an open workers' compensation claim as long as the claim is for a condition that is separate and distinguishable from the WCAB condition. For example, an employee's workers' compensation claim for a back injury may not preclude a psychological reevaluation to address an employee's continuing behavioral disruption of workplace operations through displays of angry emotionality toward co-workers and supervisors. In this situation, OHP may proceed with a reevaluation based upon a departmental request.

APPENDIX

SAMPLE CONSENT FORM

CONSENT FOR MEDICAL/PSYCHOLOGICAL RE-EVALUATION

In accordance with CSR 9.07(B), I, _____, consent to be medically/psychologically re-evaluated by Occupational Health Programs in order to determine my ability to perform the essential duties of my position.

Signature

Date